



FEDERAL TRADE COMMISSION

FTC Collaboration Act of 2021 Study

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The FTC Collaboration Act of 2021 directs the Federal Trade Commission (“FTC” or “Commission”) to “provide opportunity for public comment and advice” relevant to the production of a study concerning certain specified topics related to “efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States.” The Commission is soliciting written comments from interested persons, entities, and organizations on one or more of the topics described in the SUPPLEMENTARY INFORMATION section below.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Public Comments portion of the SUPPLEMENTARY INFORMATION section below. Write “FTC Collaboration Act of 2021 Study (Project No. P238400)” on your comment and file your comment online through <https://www.regulations.gov>.

If you prefer to file a comment in hard copy, please write “FTC Collaboration Act of 2021 Study (Project No. P238400)” on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex R), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert J. Quigley, Attorney, (310) 824-4334, and Miles D. Freeman, Attorney, (310) 824-4332, Western Region Los

Angeles, Bureau of Consumer Protection, Federal Trade Commission, 10990 Wilshire Blvd., Ste. 400, Los Angeles, CA 90024.

SUPPLEMENTARY INFORMATION:

I. General Background Information

The mission of the Federal Trade Commission is to protect the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. Many State Attorneys General have similar missions within their States, in addition to other responsibilities. These complementary missions present numerous opportunities for the Commission and State Attorneys General to share information and collaborate on matters involving consumer protection.

On October 10, 2022, President Biden signed into law the FTC Collaboration Act of 2021.¹ The Act directs the Commission to “conduct a study on facilitating and refining existing efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States.”² The results of this study will inform a report, which the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.³ In addition to setting forth the results of the study, the report shall contain “[r]ecommended best practices to enhance collaboration efforts between the Commission and State Attorneys General with respect to preventing, publicizing, and penalizing fraud and scams”; “[q]uantifiable metrics by which enhanced collaboration can be measured”; and “[l]egislative recommendations, if

¹ Pub. L. No. 117-187, 136 Stat. 2201 (2022).

² *Id.* at sec. 2(a)(1).

³ *Id.* at sec. 2(b).

any, to enhance collaboration efforts between the Commission and State Attorneys

General to prevent, publicize, and penalize fraud and scams.”⁴

The Commission welcomes the comments of State Attorneys General, other law enforcement and regulatory agencies, public interest organizations, industry representatives, consumers, economists, lawyers, academics, information technology professionals, and other interested parties.⁵

II. Topics for Public Comment

Commenters are invited to address one or more of the following topics generally, or with respect to a specific industry or area of consumer protection.⁶

A) The roles and responsibilities of the Commission and State Attorneys General that best advance collaboration and consumer protection.

Of particular interest to the Commission:

(1) What do commenters view as the respective roles and responsibilities of the Commission and State Attorneys General as they relate to consumer protection and preventing, publicizing, and penalizing frauds and scams?

(2) How, in practice, do the Commission and State Attorneys General effectively collaborate and support each other’s consumer protection missions, in the context of: (a) investigating potential frauds and scams; (b) bringing joint or parallel law enforcement actions to prevent and penalize frauds and scams; and (c) reaching out to specific consumer audiences or the community as a whole to raise awareness and prevent and

⁴ *Id.* at sec. 2(b)(2) through 2(b)(4).

⁵ In addition to providing this notification and opportunity for public comment, the Commission has been directed to consult with the National Association of Attorneys General, public interest organizations dedicated to consumer protection, relevant private sector entities, and any other Federal or State agency that the Commission considers necessary. *Id.* at sec. 2(a)(3).

⁶ *See id.* at sec. 2(a)(2). The Commission shall also examine in the study the “policies, procedures, and mechanisms that facilitate cooperation and communications across the Commission,” *id.* at sec. 2(a)(2)(B), which the Commission intends to do primarily through communications with relevant parts of the agency.

publicize frauds and scams? How could existing practices be improved to enhance effective collaboration?

(3) How, if at all, has the United States Supreme Court's decision in *AMG Capital Management, LLC v. Federal Trade Commission*⁷ impacted effective collaboration between the Commission and State Attorneys General or otherwise impacted enforcement programs?

(4) How does the work of State and local consumer protection law enforcement agencies or regulators outside of State Attorneys General, such as State financial services regulators and City Attorneys, facilitate and refine efforts between the Commission and State Attorneys General to prevent, publicize, and penalize frauds and scams? Similarly, how does the work of federal agencies that enforce laws prohibiting unfair and deceptive acts and practices (UDAP), such as the Consumer Financial Protection Bureau and the Department of Transportation, facilitate and refine efforts between the Commission and State Attorneys General to prevent, publicize, and penalize frauds and scams? How do these organizations effectively collaborate with and support State Attorneys General and the Commission in fulfilling their respective consumer protection missions? How could existing practices be improved to enhance effective collaboration?

(5) To what extent has federal law that has preempted State jurisdiction affected the ability of State Attorneys General to protect consumers from unlawful business practices?

(6) To what extent do differences or similarities between the FTC Act and State UDAP laws affect the respective abilities of the Commission and State Attorneys General to collaborate on preventing, publicizing, and penalizing frauds and scams? To what extent does the private right of action available under many State UDAP laws affect

⁷ See *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021) (holding that equitable monetary relief, including consumer redress, is unavailable under Section 13(b) of the FTC Act).

collaboration between the Commission and State Attorneys General? What differences are there between the remedies that the Commission and State Attorneys General may obtain under the statutes that they respectively enforce, and to what extent do these differences affect the respective law enforcement priorities of the Commission and State Attorneys General, and collaborative efforts between them?

(7) How can the Commission maximize use of, and contributions to, the Consumer Sentinel Network?

B) How resources should be dedicated to best advance such collaboration and consumer protection.

Of particular interest to the Commission:

(1) How should resources be dedicated to best advance collaboration and consumer protection missions between the Commission and State Attorneys General in the context of: (a) investigating potential frauds and scams; (b) bringing joint or parallel law enforcement actions to prevent and penalize frauds and scams; and (c) reaching out to specific consumer audiences, industry stakeholders, or the community as a whole to raise awareness and prevent and publicize frauds and scams?

(2) Are there any strategic, logistical, or technical challenges arising from such collaboration between the Commission and State Attorneys General?

(3) Has the exchange of technical or subject-matter expertise between the Commission and Attorneys General when collaborating on consumer protection matters been effective? Why or why not? Would States benefit from technical assistance from Commission staff, such as technologists and economists, in consumer protection matters? Are there any legal or practical restrictions on the Commission providing, and State Attorneys General receiving, technical assistance of this nature?

(4) How can information-sharing practices and technologies between the Commission and State Attorneys General be improved?

(5) What new resources or authority may be needed to enhance the Commission's collaboration with State Attorneys General?

C) The accountability mechanisms that should be implemented to promote collaboration and consumer protection.

Of particular interest to the Commission:

(1) With respect to the Commission, one of the Commission's Strategic Objectives is to "[c]ollaborate with domestic and international partners to enhance consumer protection."⁸ The Commission currently reports on certain performance indicators and metrics bearing on this Objective that relate to collaboration with State Attorneys General.⁹ Are there any additional performance indicators or metrics that the Commission should consider reporting, or other mechanisms that should be implemented?

(2) Do any of the changes in practices, new resources, or authority recommended by commenters warrant new reporting requirements or other mechanisms to promote accountability and transparency? If so, what kinds of reporting requirements or mechanisms are recommended?

III. Public Comments

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], 2023. Write "FTC Collaboration Act of 2021 Study (Project No. P238400)" on your comment. Your comment—including

⁸ *Federal Trade Commission Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023*, at 8, available at https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf.

⁹ *Id.* at 13 (Indicator 1.1.IND.3: "Number of contributors to the Consumer Sentinel Network (CSN)"); *id.* at 65 (Performance Metric 1.3.1: "Number of investigations or cases in which the FTC and other U.S. federal, state and local government agencies shared evidence or information that contributed to FTC law enforcement actions or enhanced consumer protection").

your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “FTC Collaboration Act of 2021 Study (Project No. P238400)” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex R), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with

FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *<https://www.ftc.gov/site-information/privacy-policy>*.

By direction of the Commission.

April J. Tabor,
Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly

Slaughter and Commissioner Alvaro M. Bedoya

The FTC Collaboration Act of 2021 directs the FTC to examine how we can improve collaboration with state attorneys general to prevent, publicize, and penalize fraudulent business practices. As we undertake this inquiry, we are issuing a Request for Information to gather public input.

State regulators and attorneys general play an essential role in protecting Americans from unlawful business practices. For decades they have initiated key lawsuits and filled in regulatory gaps, often paving the way for broader federal efforts. State governments have also trailblazed a variety of important consumer protection laws—from banning certain uses of facial recognition technologies to protecting Americans’ right to repair their products.

Unfortunately, federal agencies at times have sought to block consumer protection efforts by states. For example, in the leadup to the subprime mortgage crisis in 2007, some federal regulators sought to cripple states’ oversight function by wiping out their anti-predatory lending laws.¹ States still took action against non-bank subprime lenders, protecting the public at a time when federal actors were slow to mobilize.²

The FTC is committed to working closely with state partners to maximize our collective efficacy in combatting unlawful business practices and protecting Americans. States bring to cases not only an important set of remedial tools, but also more direct visibility into business practices that are harming their citizens.

Led by our regional offices, the FTC has a long history of collaborating with state enforcers. Over the last year alone, for example, we have partnered with states to bring:

¹ WookBai Kim, *Challenging the Roots of the Subprime Mortgage Crisis: The OCC’s Operating Subsidiaries Regulations and Watters v. Wachovia Bank*, 21 Loy. Consumer L. Rev. 278 (2009).

² Press Release, State of Conn. Dep’t of Banking, Ameriquest to Pay \$325 Million for Predatory Lending Practices that Bilked Consumers (Jan. 23, 2006), [https://portal.ct.gov/DOB/Newsroom/2006/Ameriquest-to-Pay-\\$325-Million-in-Nationwide-Settlement](https://portal.ct.gov/DOB/Newsroom/2006/Ameriquest-to-Pay-$325-Million-in-Nationwide-Settlement).

- our largest-ever fair lending action against a multistate auto dealer;³
- our first action under the Military Lending Act;⁴
- a major action against Google for airing deceptive ads;⁵
- an action against pesticide giants who used illegal pay-to-block schemes to inflate farmers' costs;⁶ and
- our first-ever lawsuit with California's Division of Financial Protection and Innovation to shut down a mortgage relief operation that preyed on struggling homeowners.⁷

In addition to filing these joint lawsuits, the FTC has supported states against efforts to undermine their consumer protection authorities. For example, we recently filed an amicus brief refuting Google's argument that all state-law claims involving children's online privacy are nullified because they are "inconsistent" with the Children's Online Privacy Protection Act (COPPA), a federal privacy law.⁸ Last year we filed an amicus brief explaining that companies cannot use the FTC's Franchise Rule to circumvent state-level labor protections.⁹ We have also supported efforts to strengthen state-level

³ Press Release, Fed. Trade Comm'n, FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers (Apr. 1, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

⁴ Press Release, Fed. Trade Comm'n, FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics (July 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

⁵ Press Release, Fed. Trade Comm'n, FTC, States Sue Google and iHeartMedia for Deceptive Ads Promoting the Pixel 4 Smartphone (Nov. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-states-sue-google-iheartmedia-deceptive-ads-promoting-pixel-4-smartphone>.

⁶ Press Release, Fed. Trade Comm'n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

⁷ Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation that Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

⁸ Press Release, Fed. Trade Comm'n, FTC Files Brief in Jones v. Google in Support of Appeals Court Ruling that COPPA Does Not Preempt Plaintiffs' State Privacy Claims (May 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-files-brief-jones-v-google-support-appeals-court-ruling-coppa-does-not-preempt-plaintiffs-state>.

⁹ Press Release, Fed. Trade Comm'n, FTC Files Amicus Brief in Patel, v. 7-Eleven, Inc. (Dec. 6, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-files-amicus-brief-patel-v-7-eleven-inc>.

consumer protections. For example, FTC staff recently testified before a California State Senate committee in support of legislation that would expressly grant people a right to repair several types of consumer products.¹⁰

Many thanks to the FTC team who crafted this RFI.¹¹ I look forward to receiving and reviewing public comments on how we can deepen our partnership with state enforcers to protect Americans from fraudulent business practices.

[FR Doc. 2023-12507 Filed: 6/12/2023 8:45 am; Publication Date: 6/13/2023]

¹⁰ Press Release, Fed. Trade Comm'n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair>.

¹¹ In particular, I am grateful to Maricela Segura, Faye Barnouw, Robert Quigley, and Miles Freeman in the Western Region Los Angeles Office, as well as Dotan Weinman and Lois Greisman in the Division of Marketing Practices.